

First Amendment
Joint Exercise of Powers Agreement
Housing Endowment and Regional Trust
of San Mateo County

This Agreement which supersedes in its entirety the Joint Exercise of Powers Agreement entered into the 13th day of May 2003, which established the Housing Endowment and Trust of San Mateo County, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code), is by and between the County of San Mateo (“County”) and those cities and towns within the County of San Mateo who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto, hereafter individually referred to as “Member Agency” and collectively referred to as “Member Agencies”.

RECITALS

A. The Member Agencies are responsible for the health and safety of the residents within their geographic boundaries.

B. Each Member Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control the development, construction and operation of workforce and affordable housing programs generated within its jurisdictional boundaries, as well as to create and issue development agreements for such activities.

C. The Member Agencies find it in their mutual economic interest to address work force and affordable housing issues on a regional level.

D. A county-wide adequate supply of housing will provide social and economic benefits to residents and taxpayers of the Member Agencies.

E. The Member Agencies desire to act in the public interest to lessen the burden of government by reducing the need for each Member Agency to act individually, and to provide charitable support for workforce and affordable housing in San Mateo County.

F. California Government Code §6500 et seq. (“Joint Exercise of Powers Act” or “Act”) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities.

G. Local land-use decisions remain solely with the Member Agencies. Nothing in this Agreement deprives member agencies of their sovereign powers or transfers those powers to the joint powers authority.

NOW, THEREFORE BE IT RESOLVED that the Member Agencies do hereby establish the entity to be known as the Housing Endowment and Regional Trust of San Mateo County (hereinafter referred to herein as “HEART”), to generate and disburse funding that will result in permanent additions to the workforce and affordable housing stock within San Mateo County, and do hereby agree as follows:

1. **Purpose.**

1.1 The purpose of this Agreement is to establish an organization that shall be responsible for the joint fundraising, planning, adoption, financing, administration, review, monitoring and reporting of certain workforce and affordable housing program activities in San Mateo County. By entering this joint powers authority, the Member Agencies earn economic benefits not realized when operating individually. Further, the establishment of this joint powers authority provides for the economic viability and coordination of workforce and affordable housing program financing and facilities throughout San Mateo County.

1.2 This organization is organized exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

1.3. HEART shall be an entity which is legally independent from the parties to this Agreement and shall be responsible for the administration of this Agreement.

1.4 The assets, rights, debts, liabilities, and obligations of HEART shall not constitute assets, rights, debts, liabilities, or obligations of any of the Member Agencies. However, nothing in this Agreement shall prevent any of the Member Agencies from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of HEART, provided that both the Board and the Member Agency approve such contract or assumption.

2. **Powers.**

2.1 HEART is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member Agency could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Facilitate and assist the Member Agencies and others in the housing sector to acquire, construct, finance, refinance, operate, regulate and maintain housing programs, projects and facilities.
- b. Facilitate the planning, study, and recommendation of proper and appropriate housing programs, projects and facilities, and management practices. Research and study issues related to housing, including without limitation workforce, affordable and special needs housing.
- c. Educate the public, its Member Agencies, and other agencies and entities as to housing programs, projects and facilities, including without limitation workforce, affordable and special needs housing.
- d. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the HEART's programs or activities.
- e. Solicit, apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- f. Hire agents and employees, including consultants and legal counsel.
- g. Sue and be sued in its own name.

- h. Incur and discharge debts, liabilities, and obligations provided that such debt shall be in the form of secured bonds, revenue bonds or other similar forms of secured debt.
 - i. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
 - j. Acquire or protect any necessary security or leasehold interests involved in loans, bonds, notes, or other financing methods implemented to carry out the purposes of this Agreement.
 - k. Acquire, hold, lease and dispose of real and personal property as may be necessary and appropriate in connection with the programmatic needs of HEART.
 - l. Issue and receive loans.
 - m. Acquire such insurance protection as it deems necessary.
 - n. Adopt, as authorized by California law, resolutions necessary to carry out the purposes of this Agreement
 - o. Utilize and establish advisory committees or subcommittees whenever necessary.
 - p. Adopt bylaws and such other rules and procedures as may be deemed necessary.
- 2.2 HEART shall facilitate and encourage the creation, construction, development, and maintenance of certain workforce and affordable housing throughout San Mateo County.

3. **Term and Termination**

3.1 This Agreement shall be effective upon its execution by the County and at least three (3) cities, at least two (2) of which have an adopted housing element that the Department of Housing and Community Development has determined to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code (“certified housing element”).

3.2 This Agreement shall continue at least until March 30, 2013, and thereafter shall continue until terminated or dissolved pursuant to Section 3.3 of this Agreement. However, in no event shall the Member Agencies vote to terminate or dissolve HEART if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of HEART, including, without limitation, indentures, resolutions, and letter of credit agreements.

3.3. This Agreement may be terminated by consent of all Member Agencies, and upon full and complete liquidation of all liabilities, including, but not limited to any bonds. Upon the date of termination (hereinafter “Termination Date”), payment of any and all obligations and division of any and all assets of HEART shall be conducted subject to the then-applicable requirements of the law, pursuant to the following:

a. In the event of termination of HEART where there is a successor public agency that will conduct all of the activities of HEART and will assume all of its obligations, any and all HEART assets and liabilities remaining upon termination of HEART shall be transferred to the successor public agency.

b. If there is no successor public agency that would conduct HEART’s activities, all assets and liabilities shall be apportioned to each Member Agency in proportion to the contribution of each Member Agency’s total contribution during the term of this Agreement.

c. If there is a successor public agency that would conduct some of HEART’s activities, then the Board shall allocate HEART’s assets and liabilities between the successor public agency and the Member Agencies each in proportion to its total contribution during the term of this Agreement..

d. In the event HEART is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Member Agencies or any successor shall be final.

e. The obligations of HEART terminate on the Termination Date, and each Member Agency shall pay all amounts owed to HEART prior to that date. In the event of default by a Member Agency with regard to payment of amounts due, the obligation to pay all sums due to HEART shall survive and remain in full force after the Termination Date.

f. By unanimous agreement of all then current Member Agencies, said current Member Agencies may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 3.

g. The assets distributed pursuant to this Section 3 to Member Agencies will be used for public purposes.

4. **Governance**

4.1 HEART is governed and administered by a Board of Directors (“Board”) that shall exercise all powers and authority on behalf of HEART. The Board shall consist of no more than 21 voting members (hereinafter “Directors”), as follows:

- 2** No more than two (2) members of the San Mateo County Board of Supervisors

- 9** No more than nine (9) City representatives appointed by the City Selection Committee of the Council of Cities from among city council members, provided only those cities that are Member Agencies may have a representative Director and no city may have more than one (1) representative Director.

These foregoing Directors shall be referred to as the “Public Directors”. Subject to any restriction that may be in the bylaws, the body selecting a Public Director may decide whether to select or allow alternates who may participate when the regular Public Director is absent.

- 10** Not more than 10 individuals who are not publicly elected officials, and who as broadly as may be reasonable, represent the following interests or constituencies: housing advocate groups; labor groups; non-profit developers; real estate development or sales; the population seeking below market housing; the faith community; local school districts or the County Office of Education; the business community; private foundations interested in housing; and finance or financial institutions. These Directors shall be referred to as the “At Large Directors”.

Initially, the Public Directors shall, by majority vote of those present at the meeting, select the At Large Directors. Thereafter, successor At Large Directors shall be selected by a majority vote of the voting Directors (Public Directors and At Large Directors) present at the meeting.

The number of Public Directors shall at all times be at least one more than the number of At Large Directors. Vacancies among the Public Directors shall be filled as soon as practical by the City Selection Committee of the Council of Cities to assure that this condition is met.

Additional ex-officio, non-voting, Affiliate Directors may be established by unanimous Board action, and such Affiliate Directors shall be referred to as “Affiliates”. Regular attendance by each Director and Affiliate shall be encouraged by the HEART Board and the Member Agencies.

4.2. Directors shall hold office as follows:

a. The Public Directors’ terms shall be three (3) calendar years from March of the first year through February of the third year; provided, however the initial Public Sector Directors selected by the City Selection Committee of the Council of Cities shall each be deemed to have started in March 2003, and shall have staggered terms such that three (3) have a one (1) year term, three (3) have a two (2) year term, and three (3) have a three (3) year term.

b. The At Large Directors’ terms shall be three (3) calendar years from March of the first year through February of the third year; provided, however the initial At Large Directors shall each be deemed to have started in March 2003, and shall have staggered terms such that four (4) have a one (1) year term, three (3) have a two (2) year term, and three (3) have a three (3) year term.

c. There shall be no limit to the number of terms that a Director may serve.

4.3. Directors shall receive no compensation from HEART for serving on the Board. HEART may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

4.4 The Board may establish an Executive Committee to carry out any and all functions of the Board that the Board may delegate to said Executive Committee. Executive Committee members shall be Board members, but the exact composition of the Executive Committee shall be as determined by the Board.

4.5 The Board may establish Advisory Committees to advise the Board or the Executive Committee. Advisory Committee members need not be Board members. The composition and role of an Advisory Committee shall be as determined by the Board.

4.6 There is established a Member Agency Committee, at any given time composed of all the current Public Directors, plus one (1) City Council member from each Member Agency (as may be selected by that Member Agency) that does not have a council member on the Board at the time. The Board shall receive advice and input from the Member Agency Committee in all matters involving budgets, assessments to Member Agencies and decisions as to the jurisdictions in which Program funds are to be spent. The Member Agency Committee is intended to provide an opportunity for every Member Agency, whether or not it has a council member on the Board, to participate in the fiscal and programmatic deliberations of HEART. The Member Agency Committee may provide advice and input to the Board on additional topics or matters as may be set forth in the bylaws, or as may otherwise be determined by the Board from time to time.

5. **Budgets and Financing.**

5.1 The Board annually shall adopt, by a date HEART designates by resolution, an operating budget for HEART setting forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this Agreement. The budget for HEART shall distinguish between Administrative costs (i.e., the cost of operating HEART) and Program costs (i.e., the financing of the programs funded or sponsored by HEART). HEART shall establish its fiscal year by resolution. Immediately after approving the annual budget, the Board shall recommend the budget to the governing bodies of the Member Agencies. The Board shall secure from each Member Agency contributions, appropriations and/or commitments to contribute services or other consideration in accordance with each Member Agency's obligations as

determined by the Board as set forth in this Agreement. It is expressly agreed and understood that the Board has no authority to bind any governing board of any Member Agency to make the recommended contribution, appropriation and/or commitment and that this decision rests solely with each governing body. Each Member Agency shall deposit its monetary contribution to the budget with the HEART Treasurer on or before the date HEART designates by resolution. Contributions from private persons or entities and not-for-profit entities, whether or not their interests are represented by any At Large Directors, are acceptable so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

5.2. In consideration of the mutual promises contained herein, the parties agree that they shall make the following annual contributions towards the Administrative budget of HEART: Initially, the County of San Mateo has or will, make available up to Seventy-Five Thousand Dollars (\$75,000) for the Administrative budget during the start up and initial work of HEART. Thereafter, funds required for the Administrative budget shall be provided by the contribution of each Member Agency and each Member Agency's contribution shall be its pro-rata share of the revenue needed for the Administrative budget as adopted by the Board of Directors. The pro-rata share of each Member Agency shall be based upon its population as then currently in use by City/County Association of Governments of San Mateo County (C/CAG). By unanimous vote, under special circumstances, the Board of Directors may waive one or more Member Agency's contribution. If a Member Agency fails to pay its annual contribution to the Administrative budget, during the period of such non-payment it shall forfeit any right it may have to have a Public Director from its jurisdiction on the Board. A Member Agency's contribution to the Administrative budget shall be in the form of money, unless the Board approves another form of contribution such as services, personal property or use of real or personal property, or other in-kind contributions. The acceptance and valuation of any such non-monetary contributions shall be as determined by the Board.

5.3 The particular Programs and Program budget, funded, sponsored or operated by HEART, as well as the level of, and mechanisms for, the involvement of HEART and each Member Agency, in such Programs and Program budget, shall be determined and approved by the Board. A Member Agency's individual contribution, involvement and role in any particular Program or the Program budget shall be as may be mutually agreed between the Member Agency and HEART. By way of example only, said contributions, involvement or role may include: cash contributions, provision of services or staffing, use or transfer of title to real or personal property,

participation or funding from the Redevelopment Agency under the control of or under contract with the Member Agency, pledges, guarantees or whatever other instruments or involvement the Member Agency and HEART may agree to. Contributions of all kinds to the Program budget from private persons or entities and not-for-profit entities, whether or not their interests are represented by any At Large Directors, are encouraged, so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

6. **Financial Management**

6.1. HEART may appoint a financial manager to manage, hold, invest and distribute the funds of HEART (“Financial Manager”). The duties of the Financial Manager shall include those responsibilities as deemed necessary or appropriate by the Board. There shall be a strict accountability of all funds and report of all receipts and disbursements.

6.2. The public office or officers or person or persons who may be designated to have charge of, handle, or have access to any property of HEART, shall file an official bond in an amount to be fixed by the Board.

7. **Staffing.**

7.1. It is understood that HEART may require the support of its own administrative staff. When deemed necessary, the Board may employ or use a managing agent (“Managing Agent”), to implement the objectives of HEART. The Managing Agent may consist of a separate entity or an executive director. The Board shall have responsibility for all employment decisions regarding said Managing Agent, who shall serve at the pleasure of the Board.

7.2. The Managing Agent may be delegated authority as deemed necessary or appropriate by the Board.

7.3. The Managing Agent shall be responsible for the day-to-day administration of HEART under the direction of the Board. The Managing Agent shall have the authority to employ or use administrative staff consistent with the goals, needs and approved budget of HEART.

7.4. If there is a Managing Agent that is a separate entity, that Managing Agent shall designate who on its staff shall be the Executive Director of HEART, but the acceptance of such choice shall be subject to the approval of the Board.

8. **Meetings**

8.1 The Board shall schedule by Resolution at least two (2) regular meetings each Fiscal Year.

8.2. Special meetings of the Board may be called by the Chairperson and otherwise as in accordance with provisions of the California Government Code §54956.

8.3. All meetings of the Board shall be held subject to the provisions of California Government Code §54950 et seq. and other applicable laws of the State of California.

8.4 All meetings of the Board must be held within the County of San Mateo at a location determined by the Chairperson, except that the Board may hold a special meeting outside the County of San Mateo upon an affirmative vote in accordance with Section 8.8 of this Agreement.

8.5 The Secretary shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Secretary shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

8.6 A majority of the Directors shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

8.7 Each Director is entitled to cast one vote on any matter presented to the Board for a vote.

8.8 All decisions and actions shall be by a majority of the total number of Directors, regardless of the number of Directors present, unless otherwise provided in this Agreement. For example, with 21 total Directors, 11 votes are required for a decision or action by the Board; and with 13 total Directors, 7 votes would be required.

8.9 Meetings of the Board shall be conducted by a Chairperson, or in the Chairperson's absence by the Vice Chairperson. In the absence of both the Chairperson and the Vice Chairperson, meetings shall be conducted by the Public Director in attendance who represents the largest Member Agency with Board representation, by population.

9. **Bylaws.** The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out HEART's purpose.

10. **Officers and Employees.**

10.1 Every two (2) years, the Board shall elect a Chairperson and a Vice Chairperson from among its members.

10.2 The Board shall appoint a Secretary who may, but need not be, a member of the Board.

10.3 The Board shall select a Treasurer, from one of the Member Agencies or a certified public accountant, who shall be the depository and have custody of all the money and property of HEART from whatever source. The duties of HEART Treasurer shall include those set forth in the Act, including those set forth in Government Code §6505.5. If the Board designates a certified public accountant as the Treasurer, then the auditor of one of the Member Agencies shall be designated as the auditor of HEART. The Treasurer may, if the Board so elects, also serve as the Financial Manager.

10.4 HEART shall designate its legal counsel.

11. **Withdrawal.** Any Member Agency may withdraw from this Agreement effective as of the end of any fiscal year, provided ninety (90) days prior written notice is provided to the other Member Agencies.. The rights and obligations of such withdrawing Member Agency shall terminate as of the last day of the fiscal year. The withdrawal of any Member Agency from this Agreement shall in no way affect the rights and obligations of the remaining parties. If a Member Agency withdraws from this Agreement, such Member Agency shall not be entitled to the return of any funds contributed to HEART nor to the return in cash or in kind of any materials or supplies until termination of this Agreement. If a withdrawing Member Agency has obligations under contracts or commitments, including bonds, that are independent from its obligations to HEART, such withdrawal from HEART shall have no impact on such independent obligations.

12. **Amendments.** Subject to all legal obligations of HEART, this Agreement may be amended by one or more supplemental agreements executed by all of the Member Agencies of HEART.

13. **Filings.** The Secretary shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and §53051.

14. **Notices.**

14.1. All notices to the Member Agencies shall be deemed to have been given to the Member Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Member Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

14.2 All notices to HEART shall be deemed to have been given to HEART when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chairperson, Vice Chairperson, and any Executive Director of HEART during usual business hours at the principal office, or to the person apparently in charge of that office.

15. **Assignments; Other Agreements.** This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member Agency. No Member Agency may assign any right or obligation hereunder without the written consent of all other Member Agencies. Participation in HEART is not intended to preclude Member Agencies from entering into similar agreements with other jurisdictions.

16. **Severability.** If any provision of this Agreement or its application to any person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other persons or circumstances shall not be affected.

17. **Headings.** All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

18. **Confirmation of Jurisdictional Authority.** By signing this Agreement, the member Agencies retain all jurisdictional authority granted to them by the State and/or their respective Charters. The powers and/or authority granted to HEART pursuant to this Agreement shall in no way serve to limit or restrict an individual Member Agency's jurisdictional authority.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representative, have affixed their signatures on this Agreement, effective as of the date first stated above.

COUNTY OF SAN MATEO

By: _____

President, Board of Supervisors

Date: _____

ATTEST:

By: _____

Clerk of Said Board

TOWN OF ATHERTON

By _____
Mayor

ATTEST:

Clerk of Town Council

CITY OF BELMONT

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF BRISBANE

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF BURLINGAME

By _____
Mayor

ATTEST:

Clerk of City Council

TOWN OF COLMA

By _____
Mayor

ATTEST:

Clerk of Town Council

CITY OF DALY CITY

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF EAST PALO ALTO

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF FOSTER CITY

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF HALF MOON BAY

By _____
Mayor

ATTEST:

Clerk of City Council

TOWN OF HILLSBOROUGH

By _____
Mayor

ATTEST:

Clerk of Town Council

CITY OF MENLO PARK

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF MILLBRAE

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF PACIFICA

By _____
Mayor

ATTEST:

Clerk of City Council

TOWN OF PORTOLA VALLEY

By _____
Mayor

ATTEST:

Clerk of Town Council

CITY OF REDWOOD CITY

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF SAN BRUNO

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF SAN CARLOS

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF SAN MATEO

By _____
Mayor

ATTEST:

Clerk of City Council

CITY OF SOUTH SAN FRANCISCO

By _____
Mayor

ATTEST:

Clerk of City Council

TOWN OF WOODSIDE

By _____
Mayor

ATTEST:

Clerk of Town Council